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SENATE BILL 599

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO CRIMINAL RECORDS; CODIFYING AUTHORITY TO EXPUNGE A
CRIMINAL RECORD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Criminal Record Expungement Act".

Section 2. DEFINITIONS.--As used in the Criminal Record
Expungement Act:

A. "accused" means a person charged with a crime
who is the subject of an expungement order;

B. "arrest records" means records of identification
of a person under arrest or under investigation for a crime,
taken or gathered by an official; "arrest records" includes
information gathered from the national crime information center
or another criminal record database, photographs, fingerprints

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underscored material = new
[bracketed material] = delete

1 and booking sheets;

2 C. "expunge" means to remove a notation of an
3 arrest placed on an accused's state record or federal bureau of
4 investigation record and to destroy or otherwise remove all
5 records of the proceeding;

6 D. "official" means a person employed by a
7 governmental entity and acting within assigned duties;

8 E. "proceeding" means a hearing, trial or grand
9 jury proceeding; and

10 F. "public records" means documentation relating to
11 a person's arrest, indictment, proceeding, finding or plea of
12 guilty, dismissal or discharge; except "public records" does
13 not include:

14 (1) an investigative report, intelligence
15 information of law enforcement agencies or the file of a
16 district attorney or attorney general maintained as a
17 confidential record for law enforcement purposes and not open
18 for inspection by members of the public; or

19 (2) a record maintained by the children, youth
20 and families department, the human services department or the
21 public education department when that record is confidential
22 under state or federal law and is required to be maintained by
23 state or federal law for audit or other purposes.

24 Section 3. EXPUNGEMENT OF RECORDS.--A court of original
25 jurisdiction, upon its own motion or upon a petition from an

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1 accused, shall order expungement of public records within
2 thirty days of a petition for expungement if it finds that no
3 other charge or proceeding is pending against the accused and
4 if:

5 A. the accused was a victim of identity theft;

6 B. the accused, in a proceeding for a violation of
7 a municipal ordinance, misdemeanor or felony, was released
8 without a conviction, including:

9 (1) an acquittal or finding of not guilty;

10 (2) a nolle prosequi, a no bill or a
11 dismissal; or

12 (3) a referral to a pre-prosecution diversion
13 program;

14 C. the proceedings were otherwise discharged; or

15 D. the accused was convicted of a misdemeanor or
16 violation of municipal ordinance, but has had no other
17 conviction after completion of the sentence for the original
18 conviction:

19 (1) for a period of two years, unless the
20 conviction was an offense committed against minors or children,
21 a sex offense, an offense involving domestic violence or abuse
22 or an offense involving driving while under the influence of
23 intoxicating substances; or

24 (2) for a period of four years after a
25 misdemeanor aggravated battery conviction.

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1 Section 4. NOTICES--RULEMAKING.--

2 A. Expungement requires:

3 (1) a court to expunge its public records;

4 (2) a court to serve written notice to an
5 accused who was the victim of identity theft or an accused who
6 was charged but released without a conviction of the procedures
7 for expungement and the right to petition the court for
8 expungement;

9 (3) a court to transmit copies of the order of
10 expungement to an appropriate agency or official with a demand
11 to expunge public records concerning the accused and a response
12 form to be returned to the court within thirty days to verify
13 that the public records have been expunged; and

14 (4) a court to issue a certificate of
15 expungement, to be returned to the court, verifying that public
16 records have been expunged and a copy of that certificate shall
17 be made available to the accused.

18 B. When an order of expungement is directed to the
19 children, youth and families department, the human services
20 department or the public education department, the department
21 may respond by complying with the order or by:

22 (1) notifying the court if the records are
23 confidential records under state or federal law and are
24 required to be maintained by state or federal law for audit or
25 other purposes;

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1 (2) deleting identifying information and
2 subsequently releasing the records when permitted by state or
3 federal law; or

4 (3) deleting information related to the
5 expungement order when permitted by state or federal law.

6 Section 5. EFFECT OF AN EXPUNGEMENT ORDER.--Upon entry of
7 an expungement order, the proceedings shall be treated as if
8 they never occurred and officials and the accused may reply to
9 an inquiry that no record exists with respect to the accused.
10 This section does not affect or otherwise infringe upon the
11 expungement provisions of Section 29-3-8.1 NMSA 1978.

12 Section 6. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is January 1, 2008.